

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9895 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

VK PATEL

Versus

SHIVAM CHINNANSWAY

Appearance:

MR DC DAVE for Petitioner
MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 29/01/97

ORAL JUDGEMENT

1. The respondent No.1 workman has raised an industrial dispute, inter alia, contending that he was working as a Clerk in the concern of the petitioner and termination of his service w.e.f. 28.6.1990 without

following any procedure as contemplated by the provisions of the Industrial Disputes Act, 1947 (I.D. Act) is illegal. Therefore, a Reference was made under Section 10(2) of the I.D. Act to the Labour Court after the

failure of conciliation. The Labour Court upon examination of the facts and circumstances and the evidence, passed the impugned Award on 16th August, 1994 directing the petitioner to reinstate the respondent workman with 75 per cent back wages. The petitioner employer has questioned the impugned Award in the petition.

2. The learned Advocate Mr. Dhaval C. Dave for the petitioner firstly submitted that the impugned Award is an ex-parte award and without giving sufficient opportunity to the petitioner. This submission is not acceptable in view of the facts emerging from the record of the present case. In fact, the petitioner had engaged one Advocate Mr. Bhargav Joshi. The evidence recorded by the Labour Court in which the advocate Mr. Joshi appeared and cross-examined the witness. It cannot, therefore, be said to be an ex parte award. However, even if it is an ex parte award, the petition is not competent before this Court as the statutory remedy lies which is not availed of. Therefore, the impugned Award cannot be faulted on such ground as alleged.

3. The second contention raised by the learned Advocate Mr. Dave is that the respondent workman was not entitled to reinstatement as the respondent workman was a casual worker. The Labour Court has dealt with this aspect and has recorded clear and cogent reasons for reinstatement. The finding of the Labour court that the the respondent - workman is entitled to reinstatement in

view of non-observance of the provisions of the Industrial Disputes Act, is quite justified. The Labour Court has rightly placed reliance on the evidence of the respondent - workman in absence of any rebuttal evidence of the employer. Despite the fact that on various occasions, adjournment was granted at the instance of the advocate appearing for the petitioner - employer. In the light of the facts and circumstances, the contention that the respondent - workman abandoned the service is not sustainable. The service of the respondent - workman came to be terminated by the employer in violation of the provisions of the Industrial Disputes Act and, therefore, the respondent - workman is entitled to reinstatement.

4. Now, the question requires to be examined at this stage is as to whether the award of 75 per cent back wages is reasonable and justified or not. No doubt, there is wide discretion and ample scope under Section 11-A of the I.D. Act for passing appropriate orders and directions for the payment of back wages considering the facts and circumstances of the case. In the light of peculiar facts and special circumstances emerging from the record of the present case, it would be just and appropriate to reduce the back wages from 75 per cent to 50 (fifty) per cent. The Award to that extent is required to be modified. Since the respondent - workman was gainfully employed and was earning an amount of Rs. 200/- per month, it would be just and reasonable to reduce the back wages to the extent of 50 per cent only.

Therefore, the petition is required to be partly allowed. Accordingly it is partly allowed. The petitioner employer is directed to pay 50 per cent back wages to the respondent - workman forthwith.

5. In the result, the petition is partly allowed. Rule is made absolute to the aforesaid extent only with no order as to costs.
